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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JESSICA H. et al., Persons Coming
Under the Juvenile Court Law.

B235630

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK74865)

Plaintiff and Respondent,

v.

S.M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Veronica S. McBeth, Judge. (Retired Judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Reversed in part and affirmed in part.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

S.M. (Mother) appeals from the juvenile court's jurisdictional and dispositional orders as to three of her children, Jessica H., Gregory H. and Anthony M. She contends that the juvenile court erred in assuming jurisdiction over these three children under Welfare and Institutions Code section 300, subdivisions (b) and (g),¹ based on findings that their fathers failed to provide the children with the necessities of life. She argues that there is insufficient evidence to support the findings because the record does not show that Jessica, Gregory and Anthony were left without any provision for support. We agree with Mother's contention and reverse the jurisdictional and dispositional orders as to Jessica, Gregory and Anthony. Mother does not challenge the jurisdictional and dispositional orders as to another one of her children, Antonio M., and we affirm those orders.

BACKGROUND

On October 3, 2008, in a prior dependency proceeding involving this family, the Los Angeles Department of Children and Family Services (DCFS) filed a petition alleging that five of Mother's children—Tyrone L. (17 years old), Jessica (14 years old), Gregory (13 years old), Antonio (9 years old) and Anthony (7 years old)—were persons described by section 300, subdivisions (b) and (g).² The family came to the attention of DCFS when Mother's newborn grandson, who lived with Mother and her adult daughter (the infant's mother), was taken to the hospital and "diagnosed with failure to thrive due to being under fed and undernourished." Mother's adult daughter was "developmentally delayed" and Mother was helping care for the newborn. On several occasions, Mother told her daughter to take the infant to the doctor, but Mother did not insist that her daughter follow through. Mother maintained that she did not realize the severity of the newborn's illness.

¹ Further statutory references are to the Welfare and Institutions Code.

² Tyrone was later stricken from the petition and is not involved in the present dependency proceeding. At the time of the first petition, Tyrone was living with an uncle. Antonio had been living with an aunt since December 2005. The other three children lived with Mother.

On January 22, 2009, the juvenile court found Jessica, Gregory, Antonio and Anthony to be persons described by section 300, subdivisions (b) and (g), based on jurisdictional findings that the children were endangered by Mother's failure to provide appropriate care and supervision for her newborn grandson, and by the children's fathers' failures to provide them with the necessities of life. During this period of supervision, DCFS learned that Antonio had muscular dystrophy and would need special care. On December 3, 2010, after DCFS had provided services to the family, the juvenile court terminated dependency jurisdiction over all of the children. Jessica, Gregory, Antonio and Anthony were in Mother's care.

On March 7, 2011, DCFS filed a second petition regarding Jessica, Gregory, Antonio and Anthony, after it learned that Mother was not taking 11-year-old Antonio to medical appointments or providing an appropriate home environment for his debilitating condition (Duchenne's muscular dystrophy). Antonio could no longer walk and could not get to the bathroom because it was located upstairs in the family's apartment. DCFS detained Antonio on March 2, 2011 and placed him in a group home.

The petition alleged that Antonio was a person described by section 300, subdivisions (b) and (g), based on his Mother's failure to provide him with appropriate medical care and his father's failure to provide him with the necessities of life, including food, clothing, shelter and medical care. The petition alleged that Jessica, Gregory and Anthony were persons described by section 300, subdivisions (b), (g) and (j), based on their Mother's failure to provide Antonio with appropriate medical care and their fathers' failures to provide them with the necessities of life, including food, clothing, shelter and medical care.

At the detention hearing on March 7, 2011, the juvenile court ordered that Jessica, Gregory and Anthony could remain in Mother's home, and that Antonio would remain detained in shelter care. It is undisputed that Jessica and Gregory's father, G.H., and

Antonio and Anthony's father, C.M, were not available to care for the children and did not provide support for them.³

In a report prepared on or about April 5, 2011, DCFS stated that Antonio's doctor "expressed concern that [M]other appears to have limited cognitive ability and for that reason does not understand the seriousness of [Antonio]'s condition and therefore does not seek medical care." (Italics and bold omitted.) The doctor added that "when [Antonio] was present [at medical appointments], he appeared to be well cared for by [M]other." In the report, DCFS did not express any concerns with Mother's care of Jessica, Gregory and Anthony.

On April 13, 2011, a social worker visited Mother's home and met with Mother, Jessica, Gregory and Anthony. The children were well-groomed. The social worker noted that the "home was a little cluttered and the kitchen sink had dirty dishes in it," The social worker did not note any concerns with Mother's ability to provide for the children. The social worker spoke with Gregory about his school attendance problem, and suggested that he consider continuation school.

On April 25, 2011, the social worker visited Mother's home again and noted that the home was "neater" and there were no dirty dishes in the kitchen sink. "There was an appropriate amount of food in the refrigerator and in the cabinets."

On July 13, 2011, Mother submitted to a psychological evaluation under Evidence Code section 730. The evaluator concluded that Mother is "mentally retarded." The evaluator stated that Mother "does not appear to be at all insightful or resourceful, and her judgment also seems to be very impaired." She did not comprehend the situation and did not react appropriately when her newborn grandson and son Antonio were in need of medical care. The evaluator did not believe that Mother was capable of providing adequate care for Antonio on her own. The evaluator did not address Mother's care of Jessica, Gregory and Anthony.

³ G.H. and C.M. are not parties to this appeal.

On August 1, 2011, the juvenile court held the jurisdiction and disposition hearing. The children's fathers were not present at the hearing. Mother submitted on the petition, as amended, based on the agreement of counsel. The court sustained allegation b-1, which was amended to read: "The child, Antonio M[.], is diagnosed with Duchenne's Muscular Dystrophy and is non-ambulatory requiring ongoing medical treatment for the child's life threatening illness. The child's mother, S[.]M[.] was unable to regularly keep the child's necessary medical appointments. The mother's inability endangers the child's physical and emotional health, safety and places the child at risk of harm."

The court also sustained allegations b-2 and g-1, which read: "The children, Jessica H[.] and Gregory H[.]'s father G[.]H[.] has failed to provide the children with the necessities of life including food, clothing, shelter and medical care. The father's whereabouts is unknown. Such failure to provide for the children on the part of the father endangers the children's physical and emotional health, safety and well being and places the children at risk of physical and emotional harm and damage."

The court also sustained allegations b-3 and g-2, which read: "The children, Antonio [M. and] Anthony M[.]'s father, C[.]M[.] has failed to provide the children with the necessities of life including food, clothing, shelter and medical care. The father's whereabouts is unknown. Such failure to provide for the children on the part of the father endangers the children's physical and emotional health, safety and well being and places the children at risk of physical and emotional harm and damage."

The juvenile court struck from the petition the allegation under section 300, subdivision (j), which provided that Jessica, Gregory and Anthony were at risk of harm based on Mother's failure to provide Antonio with appropriate medical care.

Mother objected to the juvenile court assuming jurisdiction over Jessica, Gregory and Anthony given that there were no allegations in the petition regarding these three children sustained against her. The court declared all four of the children to be dependents of the court under section 300, subdivisions (b) and (g). Jessica, Gregory and Anthony remained placed in Mother's home. Antonio remained placed in a group home. The court ordered services, including individual counseling for the children.

DISCUSSION

Motions to Dismiss

December 21, 2011 motion to dismiss

In her opening appellate brief, Mother asked this court to reverse the jurisdictional findings under section 300, subdivision (g), that Jessica and Gregory's father and Anthony's father failed to provide the children with the necessities of life. On December 21, 2011, in conjunction with its respondent's brief, DCFS filed a motion to dismiss Mother's appeal. DCFS argued that Mother was not aggrieved by the juvenile court's assumption of jurisdiction under section 300, subdivision (g), because the court had sustained identically-worded allegations under section 300, subdivision (b), about the fathers' failures to provide the children with the necessities of life. In her opening brief, Mother did not challenge the findings under section 300, subdivision (b). In opposition to the December 21, 2011 motion to dismiss and in her reply appellate brief, Mother explained that she had inadvertently failed to challenge the identically-worded findings under section 300, subdivision (b).

We asked the parties to file supplemental briefing addressing whether the juvenile court erred in sustaining the allegations under section 300, subdivision (b), that the children's fathers failed to provide the children with the necessities of life. The parties filed their supplemental briefing. We will address the merits of Mother's contention that the juvenile court erred in assuming jurisdiction over Jessica, Gregory and Anthony under section 300, subdivisions (b), in addition to subdivision (g). Accordingly, we deny DCFS's December 21, 2011 motion to dismiss the appeal.

April 24, 2012 motion to dismiss

DCFS filed another motion to dismiss on April 24, 2012, along with a request for judicial notice of a juvenile court minute order issued February 29, 2012. The minute order shows that the juvenile court terminated dependency jurisdiction over Jessica and released her to Mother on February 29, 2012. Jessica is 18 years old. We grant DCFS's request for judicial notice.

In this second motion to dismiss, DCFS argues that Mother's appeal is moot as to Jessica because the juvenile court has terminated jurisdiction and a reversal of "the jurisdictional findings as to her would have no meaningful effect." In her opposition, Mother urges this court to deny the April 24, 2012 motion to dismiss, arguing that the jurisdictional findings as to Jessica could prejudice her in future dependency proceedings.

"A question becomes moot when, pending an appeal from a judgment of a trial court, events transpire which prevent the appellate court from granting any effectual relief." (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 566.) "As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot," unless the appellant can demonstrate that "a [p]otential [e]xists for [a]dverse [c]ollateral [c]onsequences. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.)

We deny DCFS's April 24, 2012 motion to dismiss. Although the relevant findings were made against Jessica's father and not Mother, "a jurisdictional finding under section 300, subdivision (g) requires DCFS to show that '[t]he child has been left without any provision for support'" (*In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1065.) The finding that Jessica was left with no provision for support has the potential to prejudice Mother in this or future dependency proceedings.

Jurisdictional Findings

As set forth above, Mother contends that the juvenile court erred in assuming jurisdiction over Jessica, Gregory and Anthony under section 300, subdivisions (b) and (g), based on findings that their fathers "failed to provide the children with the necessities of life including food, clothing, shelter and medical care." She argues that there is insufficient evidence to support the findings because the record does not show that Jessica, Gregory and Anthony were left without any provision for support.

DCFS argues that Mother waived her right to appeal from these jurisdictional findings by agreeing to a negotiated settlement of the allegations in the petition brought against her. We disagree. Below Mother objected to the assumption of jurisdiction over Jessica, Gregory and Anthony—the same issue she raises here. Moreover, a challenge to

the sufficiency of the evidence supporting jurisdictional findings is not waived by a failure to object on that basis below. (*In re Anthony G.*, *supra*, 194 Cal.App.4th at p.1064; see *In re M.B.* (2010) 182 Cal.App.4th 1496, 1506 [“claim that there is insufficient evidence to support the judgment is not waived by failure to object”].)

““When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]” [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258-1259.)

Section 300, subdivision (g)

As set forth above, “a jurisdictional finding under section 300, subdivision (g) requires DCFS to show that “[t]he child has been left without any provision for support”” (*In re Anthony G.*, *supra*, 194 Cal.App.4th at p. 1065, quoting section 300, subd. (g).) Here, the record shows that Mother was providing support for Jessica, Gregory and Anthony. There is no evidence that she failed to provide them with food, shelter, clothes or medical care. (See *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1320 [insufficient evidence supporting jurisdictional finding under section 300, subdivision (g), against absent father because there was no evidence of “malnutrition, deprivation of shelter, clothes or medical care” for the minor].)

In this dependency proceeding, the juvenile court found—and Mother concedes—that she did not provide appropriate medical care for Antonio to treat his Duchenne’s muscular dystrophy. The juvenile court did not find, however, that Jessica, Gregory and Anthony were at risk of neglect based on Mother’s failure to provide Antonio with

appropriate medical care. The court struck the allegation under section 300, subdivision (j), from the petition.

DCFS notes that “Jessica, Gregory and Anthony have all experienced significant academic problems,” and that Jessica and Gregory have had behavioral and attendance problems at school. This is not evidence tending to show that these children were left without provision for support.

DCFS also points out that Mother has “significant mental deficiencies.” The juvenile court did not make a finding that Mother has mental deficiencies which render her unable to provide care for her children.

DCFS’s belief that Mother needs services for Jessica, Gregory and Anthony is not a valid reason for continuing dependency jurisdiction where the evidence does not support the jurisdictional findings. The juvenile court’s assertion of jurisdiction over Jessica, Gregory and Anthony under section 300, subdivision (g), is improper.

Section 300, subdivision (b)

Jurisdiction under section 300, subdivision (b), is appropriate where “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b).)

The juvenile court sustained allegations under section 300, subdivision (b), that are identical to the allegations it sustained under subdivision (g)—that the children’s fathers “failed to provide the children with the necessities of life including food, clothing, shelter and medical care” and that this failure “endangers the children’s physical and

emotional health, safety and well being and places the children at risk of physical and emotional harm and damage.”

The children’s fathers’ failure to provide food, clothing, shelter and medical care for Jessica, Gregory and Anthony did not endanger these children because Mother was providing food, clothing, shelter and medical care for Jessica, Gregory and Anthony. Any perceived risk that Mother might not be able to provide for these three children was speculative and not based on evidence in the record. Accordingly, the juvenile court’s assertion of jurisdiction over Jessica, Gregory and Anthony under section 300, subdivision (b), is improper.

For the foregoing reasons, we reverse the jurisdictional and dispositional orders as to Jessica, Gregory and Anthony.

DISPOSITION

The jurisdictional and dispositional orders are reversed as to children Jessica H., Gregory H. and Anthony M. The orders are affirmed as to child Antonio M.

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CHANNEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.